Office-Supreme Court, U. S.
FILED
JAN 9 1951
CHARLES ELMORE CROPLEY

No. 435

In the Supreme Court of the United States

OCTOBER TERM, 1950

BOWMAN DAIRY COMPANY ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND WILLIS L. HOTCHKISS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit (R. 128) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1950 (R. 140). The petition for writ of certiorari was filed on December 6, 1950. The jurisdiction of this Court is invoked under Title 28, United States Code, § 1254.

QUESTION PRESENTED

Whether the scope of pre-trial discovery against the United States permitted by Rule 16 of the

Federal Rules of Criminal Procedure may be expanded by use of a subpoena *duces tecum* under Rule 17 (c) requiring pre-trial production of all documents, not privileged, obtained by Government counsel in any manner other than by seizure or process in the course of the grand jury investigation and of preparation for trial if such documents were presented to the grand jury, or are to be offered as evidence on the trial or "are relevant to the allegations or charges contained in said indictment, whether or not they might constitute evidence with respect to the guilt or innocence of any of the defendants."

FEDERAL RULES INVOLVED

Federal Rules of Criminal Procedure (18 U. S. C. foll. 687):

RULE 16. DISCOVERY AND INSPECTION

> Upon motion of a defendant at any time after the filing of the indictment or information, the court may order the attorney for the government to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, obtained from or belonging to the defendant or obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. The order shall specify the time, place and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

RULE 17. SUBPOENA

* * * * *

(c) For Production of Documentary Evidence and of Objects.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

STATEMENT

This proceeding arose out of a criminal case charging a violation of the Sherman Act. The present petition seeks review of a judgment of the court of appeals reversing an order of the United States District Court for the Northern District of Illinois, Eastern Division (Judge Barnes), committing respondent Hotchkiss for contempt of court. Petitioners are the defendants in the criminal case. Respondent Hotchkiss is Chief of the Midwest Office of the Antitrust Division of the Department of Justice. The contempt order resulted from respondent Hotchkiss'

refusal, on instructions of the Attorney General, to comply with an order of the district court requiring him to make available to the petitioners for pre-trial inspection all documents of the character described in a subpoena *duces tecum* issued purportedly under the authority of Rule 17 (c) of the Federal Rules of Criminal Procedure.

The indictment in this case, returned on July 30, 1948 (R. 2), charges eight corporations, all engaged in the milk business in the greater Chicago area, and nine officers of these corporations, with conspiring to allocate among themselves wholesale fluid milk customers in the Chicago area and sales of fluid milk to certain public institutions therein, in violation of Section 1 of the Sherman Act (R. 3–9). Motions by the petitioners to dismiss the indictment were denied by the district court on April 13, 1949 (R. 117).

On June 13, 1949, the trial date not having been set (R. 117), petitioners made two pre-trial motions aimed at securing access to documentary material in the Government's possession relating to this case. One of these motions, made under Rule 16 of the Criminal Rules, requested an order directing the Government to produce for petitioners' inspection the documents which the Government had obtained from the petitioners or other persons by seizure or process (R. 28-46). The other, made under Rule 17 (c), was for an order requiring the Government to produce for petitioners' inspection documents obtained by the

Government by means other than by seizure or process (R. 10–27).

The parties having agreed on the form of an order for inspection of documents pursuant to Rule 16, such an order was entered by the court on November 7, 1949 (R. 52, 64). The order required the Government to permit defendants to inspect and copy the documents obtained by the Government by subpoenas *duces tecum* issued in connection with the grand jury investigation which had resulted in the petitioners' indictment (R. 64). Attached to the order was an exhibit listing 56 such subpoenas (R. 65–69). The Government did not resist this order under Rule 16.

The motion for an order under Rule 17 (c) was presented to the district court at a hearing on November 7, 1949. The court took the position that Rule 17 (c) applied, and that the petitioners' rights to discovery were not confined to those given by Rule 16 (R. 52–55). The court accordingly entered on that date an order under Rule 17 (c) (R. 69–71) directing the Government to produce for the petitioners' inspection the books, papers and documents designated in a subpoena *duces tecum* which the petitioners had filed and served on November 1, 1949 (R. 48–50), addressed to respondent Hotchkiss and Otto Kerner, Jr., United States Attorney for the Northern District of Illinois. The subpoena, a copy of which was attached to the court's order (R. 70–71), directed production of:

all documents, books, papers and objects (except memoranda prepared by Government counsel, and documents or paper solicited by or volunteered to Government counsel which consist of narrative statements of persons or memoranda of interviews), obtained by Government counsel, in any manner other than by seizure or process, (a) in the course of the investigation by Grand Jury No. 8949 which resulted in the return of the indictment herein, and (b) in the course of the Government's preparation for the trial of this cause, if such books, papers, documents and objects, (a) have been presented to the Grand Jury; or (b) are to be offered as evidence on the trial of the defendants, or any of them, under said indictment; or (c) are relevant to the allegations or charges contained in said indictment, whether or not they might constitute evidence with respect to the guilt or innocence of any of the defendants.

The Government subsequently moved to quash the subpoena issued under Rule 17 (c), and to set aside the order of November 7, 1949 directing compliance with this subpoena (R. 72–73) on the ground, *inter alia,* that the right of defendants in criminal proceedings to obtain access to documents and other papers in the custody of attorneys for the Government is limited to the rights granted to such defendants by Rule 16 of said Rules.

On January 4, 1950, the court denied the Government's motion to quash (R. 83–84). Respondent Hotchkiss thereupon submitted to the court a written statement, in the form of an affidavit, which averred that all of the documents, etc., which the court had ordered produced were in his custody (R. 84–85). The statement, after summarizing the reasons for the Government's contention that the subpoena and order were not authorized by Rule 17 (c), stated that respondent Hotchkiss, acting on the advice and instructions of the Attorney General and the Assistant Attorney General in charge of the Antitrust Division, respectfully declined to comply with the court's order of November 7, 1949 (R. 86–87).

On January 5, 1950, the court entered an order finding respondent Hotchkiss guilty of contempt of the court in refusing to produce the documents designated in the subpoena and in refusing to comply with the court's order of November 7, 1949 (R. 99). The order therewith committed respondent Hotchkiss to the custody of the Attorney General to be held until he should comply with the provisions of the subpoena *duces tecum* and should obey the court's order of November 7, 1949, or until he should be discharged from custody by due process of law (*ibid.*).[1]

[1] On the same day the court below admitted respondent Hotchkiss to bail on his own recognizance (R. 102).

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The court below reversed the contempt order. In an opinion by Judge Duffy (R. 128), the court held that the Government's motion to quash the subpoena and to set aside the order of compliance should have been granted (R. 134). Judge Duffy said (R. 134):

> Although the language of Rule 17 (c) is broad, the rule is only one in an integrated group for the regulation of procedure in criminal cases in federal courts. It must be read with the other rules in mind, and particularly Rule 16. It should not be construed so that the carefully drawn limitations in Rule 16 become meaningless. It is our view that Rule 17 (c) provides for the traditional type of trial subpoena, although as a matter of convenience it may be made returnable before the actual date of trial. However, it may not be converted into an unrestricted pre-trial discovery device.

Chief Judge Major filed a separate concurring opinion in which he expressed his agreement "with the result reached by Judge Duffy and with his reasoning" but stated that "I would go further and hold that Rule 17 (c) imposes no obligation upon parties, either the defendants or the government, including their attorneys" (R. 134).

Judge Lindley, dissenting, was of the view that the effect of the court's decision was to render

Rule 17 (c) a nullity as applied to an attorney for the Government (R. 139).

ARGUMENT

1. The court below[2] correctly held that the subpoena *duces tecum* and order to comply therewith directed to respondent Hotchkiss by the district court were beyond the authority conferred by Rule 17 (c) of the Federal Rules of Criminal Procedure. If Rule 17 (c) were construed to authorize the type of subpoena here issued it would permit precisely what Rule 16, the discovery rule, forbids.

The pre-trial discovery procedure established by the Criminal Rules is set forth in Rule 16, which is entitled "Discovery and Inspection" (*supra*, p. 2). Under that rule the court, at any time after the filing of the indictment or information, may order discovery against the attorney for the Government as to certain specified categories of documents and other materials upon a showing "that the items sought may be material to the preparation" of the defense and "that the request is reasonable." The rule provides for such discovery (i. e., inspection and copying) as to documents and other materials (1) obtained from or belonging to the defendant or (2) obtained from others by seizure or process.

[2] We refer to Judge Duffy's opinion as that of the court since Chief Judge Major concurred with the "result" and "reasoning" of Judge Duffy (R. 134).

The history of the Criminal Rules reveals that early drafts of Rule 16 were patterned after Civil Rule 34 which embodies the principle of broad pre-trial discovery—one of the main innovations of the Civil Rules. The limitations on discovery which were introduced into the final draft which became Criminal Rule 16 represent a deliberate rejection of the broad discovery principle in criminal cases.[3] See *Shores* v. *United States*, 174 F. 2d 838, 844 (C. A. 8).

Petitioners have utilized Rule 16 to obtain access to all documents in the custody of the attorney for the Government—respondent Hotchkiss—which had been obtained from or belonged to the petitioners, or had been obtained from other persons by seizure or by process. Petitioners, however, sought broader discovery. The disputed subpoena *duces tecum* calls for the documents ob-

[3] Compare Federal Rules of Criminal Procedure, Preliminary Draft (1943) Rule 19, and *id.*, Second Preliminary Draft (1944) Rule 18, with Civil Rule 34. And compare note of Advisory Committee to Draft Rule 18 of the Second Preliminary Draft, *id.*, pp. 94–95, with note to Rule 16. The notes to the earlier drafts of this rule cited Civil Rule 34, apparently as the source of the rule; in the note to Rule 16 all reference to the civil rules is eliminated. The note to Rule 16, as adopted, describes it as permitting defendants to inspect impounded documents belonging to them, and also permitting inspection of objects and documents obtained from others by seizure or by process "on the theory that such evidential matter would probably have been accessible to the defendant if it had not previously been seized by the prosecution."

tained by Government counsel in any manner other than by seizure or process, if such materials "are relevant to the allegations or charges contained in said indictment" (*supra*, p. 6).[4]

Petitioners do not contend that the disputed subpoena is authorized by Rule 16. Their contention is that the language of Rule 17 (c) which provides that the court may direct production of subpoenaed documents "prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books [etc.] * * *, to be inspected by the parties and their attorneys" (*supra*, p. 3) confers discretion upon the district court to permit pre-trial inspection of such materials as it deems appropriate. There are several insuperable difficulties with this contention.

First, as the court below pointed out (R. 134), Rule 17 (c) "is only one in an integrated group for the regulation of procedure in criminal cases in federal courts. * * * It should not be construed so that the carefully drawn limitations in Rule 16 become meaningless." It seems too clear to require extended discussion that the framers of the Rules would not have created in Rule 16 a privilege of discovery by motion for production

[4] The only categories of materials except from the subpoena are (a) the work product of Government counsel, (b) what might be generally characterized as statements of Government informants, and (c) materials obtainable under Rule 16.

carefully limited to documents taken from or belonging to the defendant, or taken from others by seizure or process, and at the same time have created in Rule 17 (c) an unlimited privilege of pretrial discovery by the subpoena route. Nor would the framers have conditioned the privilege of discovery in Rule 16 upon a showing by the defendant that the items sought may be "material to the preparation of his defense" if at the same time Rule 17 (c) authorized unlimited discovery by subpoena, subject only to a motion to quash on the ground that "compliance would be unreasonable or oppressive." Petitioners seek to meet these arguments by pointing out that the power of the court to order pretrial production under Rule 17 is entirely discretionary (Pet. 17–18). The short answer is that the pretrial discovery permitted by Rule 16 is also discretionary[5] but the power of the court to order such discovery is subject to express limitations. The framers obviously could not have intended by Rule 17 to confer unlimited discretion to render nugatory the express limitations on discretionary power contained in Rule 16.

Second, the sentence in Rule 17 (c) upon which petitioners rely does not, if read in context, suggest the creation of a broad discovery device. Rule 17 (a) provides for subpoenas *ad testifi-*

[5] Not only does Rule 16 provide that the court "may" (rather than "shall") order discovery, but it also requires a showing that "the request is reasonable" and empowers the court to "prescribe such terms and conditions as are just."

candum;[6] Rule 17 (c) provides that the subpoena "may also command the person to whom it is directed" to produce designated documents or other materials. When the two subdivisions are read together it is apparent that the latter relates to the traditional trial subpoena *duces tecum* by means of which witnesses may be required to bring documents with them to the trial or other proceeding. The provision for production of documents "prior to the trial or prior to the time when they are to be offered in evidence" plainly refers to evidentiary material which is to be offered at the trial by the party subpoenaing it, not to all materials in the hands of the opposing party "whether or not they might constitute evidence with respect to the guilt or innocence of any of the defendants" (cf. instant subpoena, *supra,* p. 6). The rule cannot reasonably be read as authorizing the court to require a general disclosure by a party of its entire case. A provision which in terms merely relates to the time at which a subpoena *duces tecum* is returnable and the time at which the parties may be permitted to exercise the time-honored privilege of inspection of documentary materials prior to their actual receipt in evidence,

[6] "A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed *to attend and give testimony at the time and place specified therein.* * * *" [Emphasis supplied.]

should not be construed as a *carte blanche* authorization of dragnet pretrial discovery.

Finally, the history of the Criminal Rules shows that the provision on which petitioners rely was never conceived as a discovery provision. The genesis of Rule 17 (c) is found in Rule 20 of the Preliminary Draft (1943). The Advisory Committee's note to the draft rule states that the rule "applies to subpoenas *ad testificandum* and subpoenas *duces tecum* issued for attendance at a trial or hearing in the district courts, at hearings before United States commissioners, or to take depositions."[7] There is no suggestion that an auxiliary discovery device was contemplated. On the contrary, the sentence permitting the court to require production of documents prior to trial or prior to the time at which they are to be offered in evidence is explained as follows:[8]

> The last sentence provides for a method by which the court may permit either side to inspect subpoenaed documents or objects under the supervision of the court. It is inserted *in the interests of fairness* and for the *purpose of preventing delay during the trial,* particularly in cases where numerous documents may have been subpoenaed. [Emphasis supplied.]

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[7] Federal Rules of Criminal Procedure, Preliminary Draft (1943), p. 106. As there are no substantial changes in the language of the subdivision as it appears in the final rule, the notes to the original draft are apposite.

[8] *Id.*, pp. 107–108.

The construction of Rule 17 (c) urged by petitioners thus is not only inconsistent with the express limitations on pre-trial discovery found in Rule 16, but the very sentence of the rule upon which they rely was designed for other purposes. Rule 17 (c) provides for conventional trial process, with the single novel element that documentary evidence may be required to be produced prior to the time it is to be offered in evidence, even though that time be prior to trial. The instant subpoena, calling as it does for substantially all of the Government's documentary material, whether evidentiary or not, clearly cannot be justified under the authority of Rule 17 (c).

The construction of Rule 17 (c) adopted by the court below renders it harmonious with Rule 16, as the framers of the Rules must have intended. That construction also preserves unimpaired the important function of Rule 17 (c). The court did not, as petitioners imply,[9] hold that a defendant in a criminal case may never inspect, in advance of trial, specifically identified documents obtained by the Government by means other than seizure or process. It held invalid an order for compliance with a subpoena which would in effect have required the Government to disclose its entire case—to the extent contained in documentary form. But this holding does not mean that a subpoena for specific evidentiary material to be offered by the defense

[9] See Question I in petitioners' statement of Questions Presented (Pet. 2).

at the trial would be invalid if the material subpoenaed were beyond the discovery provisions of Rule 16.[10] The court below has not weakened the production-before-trial provision of Rule 17 (c) (cf. dissenting opinion, R. 139). It has merely in effect held that what is actually a trial subpoena may not be utilized for a broad fishing expedition into the opposing party's case.

2. There is no conflict between the decision below and that in *United States* v. *Bondy*, 171 F. 2d 642 (C. A. 2). The holding of that case was that a petition for leave to file a petition for a writ of mandamus should be denied. The bulk of the court's brief *per curiam* opinion was devoted to a discussion of the impropriety of the issuance of the extraordinary writ where the challenged action of the lower court is not subject to the appellate jurisdiction of the court of appeals. It is true that the *per curiam* opinion stated that "The most that can be urged is that the order was so sweeping as to amount to an abuse of discretion; it did not deal with matters beyond the court's jurisdiction" (171 F. 2d at 644). At most this statement imports a holding that for the purpose of mandamus the court would limit its inquiry to the ques-

[10] Thus in a murder prosecution the Government might have possession of the alleged murder weapon which the defense desired to offer at the trial. A subpoena under Rule 17 (c) requiring production of the weapon might validly be ordered returnable prior to trial, although the weapon was not taken from the defendant or others by seizure or process.

tion whether a district court has the power to issue a subpoena *duces tecum*. As the court below noted (R. 134), "the opinion cannot be construed as a considered determination as to the character of documents which a subpoena may include or the purposes for which it may issue."

With the single exception of the opinion of Judge Barnes, which the court below reversed in the instant case, every reported case where the issues here involved are discussed is in accord with the decision below.[11] *United States* v. *Maryland & Virginia Milk Producers Association*, 9 F. R. D. 509 (D. D. C.); *United States* v. *Hiss*, 9 F. R. D. 515 (S. D. N. Y.); *United States* v. *Bramfield*, 85 F. Supp. 696 (W. D. La.). In the *Maryland & Virginia Milk Producers Association* case, *supra*, defendants sought a subpoena *duces tecum* directing the Government to produce all documents which it had obtained from any person

[11] In the unreported case of *United States* v. *Norman Littell and Lewis H. Marks* (S. D. N. Y., 1948), in which leave to file mandamus was denied in *United States* v. *Bondy*, *supra*, the grounds on which the district court relied in reaching its decision cannot be ascertained since it filed no opinion. In the unreported opinion of November 10, 1949, in the case of *United States* v. *Hiss* (No. C128–402, S. D. N. Y.), it appears that a subpoena for certain specific documents had been served upon the Secretary of State and that he had complied with the subpoena to the extent of forwarding the documents to the court. In denying a motion to quash the district court stressed the fact that the subpoena had not been served on the attorney for the Government.

not a party to the proceeding whether by process or not. In denying the request, the court stated (9 F. R. D. at 510):

> The purpose of this provision is a limited one. It is to make it possible to require the production before the trial of documents subpoenaed for use at the trial. Its purpose is merely to shorten the trial. It is not intended as a discovery provision.

And see *United States* v. *Brumfield, supra,* at 707; *United States* v. *Hiss, supra,* at 516.

Petitioners' contention that the interpretation placed upon Rule 17 (c) by the court below deprives defendants in criminal cases of "basic privileges which are deeply rooted in the American common law" (Pet. 11–12) is also unsound. Pre-trial disclosure of any kind of the prosecution's evidence was unheard of at early common law.[12] Certainly neither the prior federal practice nor the overwhelming weight of state authority (both before and since the Criminal Rules were adopted) recognized any broad right of pre-trial discovery in criminal cases.[13] It may well

[12] *Rex* v. *Holland*, 4 T. R. 691, 100 E. R. 1248; see *Shores* v. *United States*, 174 F. 2d 838, 843 (C. A. 8); *State ex rel. Robertson* v. *Steele*, 117 Minn. 384, 385, 135 N. W. 1128, 1129; Wigmore, *Evidence* (3rd ed., 1940) § 1859g. For a searching review of authorities in this field, see Cardozo, Ch. J., in *People ex rel. Lemon* v. *Supreme Court*, 245 N. Y. 24, 156 N. E. 84.

[13] *United States* v. *Rosenfeld*, 57 F. 2d 74 (C. A. 2), certiorari denied, 286 U. S. 556; *Massie* v. *People*, 82 Colo. 205, 258 Pac. 226; *Padgett* v. *State*, 64 Fla. 389, 59 So. 946;

have been this very lack of precedent in favor of pre-trial disclosure of evidence that led the framers of the Rules to refrain from following the pattern established by the Civil Rules. See *Shores* v. *United States*, 174 F. 2d 838, 844 (C. A. 8); cf. Advisory Committee's Note to Rule 16.

The limited "discovery" permitted by some courts at common law was entirely different from what the petitioners demand in the instant case. It was complementary to the indictment and bill of particulars, and designed to insure that a defendant be properly informed of the charges against him, not to give him the details of the prosecution's evidence. Ordinarily it was granted only when the defendant showed a real need to inspect par-

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Newton v. *State*, 21 Fla. 53; *People* v. *Schallman*, 295 Ill. 560, 129 N. E. 569; *Weer* v. *State*, 219 Ind. 217, 36 N. E. 2d 787; *State* v. *Jeffries*, 117 Kan. 742, 232 Pac. 873; *Wendling* v. *Comm.*, 143 Ky. 587, 137 S. W. 295; *State* v. *Williams*, 211 La. 782, 30 So. 2d 834; *Comm.* v. *Noxon*, 319 Mass. 495, 535, 66 N. E. 2d 814, 839; *Comm.* v. *Jordan*, 207 Mass. 259, 93 N. E. 809; *People* v. *Kuberacki*, 310 Mich. 162, 16 N. W. 2d 703; *State ex rel. Page* v. *Terte*, 324 Mo. 925, 25 S. W. 2d 459; *State ex rel. Robertson* v. *Steele*, 117 Minn. 384, 135 N. W. 1128; *Hameyer* v. *State*, 148 Neb. 798, 29 N. W. 2d 458; *State* v. *Bunk*, 63 A. 2d 842 (Cty. Ct. N. J.); *People* v. *Gatti*, 167 Misc. 545, 4 N. Y. S. 2d 130; *State* v. *Di Noi*, 59 R. I. 348, 195 Atl. 497; *May* v. *State*, 129 Tex. Cr. R. 2, 83 S. W. 2d 338; *Abdelt* v. *Comm.*, 173 Va. 458, 2 S. E. 2d 293; *State* v. *Payne*, 25 Wash. 2d 407, 171 P. 2d 227; *Santry* v. *State*, 67 Wis. 65, 30 N. W. 226. And see 2 Wharton, *Evidence in Criminal Cases* (11th ed., 1935) 1311-12; 23 C. J. S., Criminal Law, § 955; 17 Am. Jur., Discovery, § 25.

ticular identifiable objects of evidence. *United States* v. *Burr*, 25 Fed. Cas. 30 (C. C. D. Va.) (Pet. 12–13),[14] is an early example of this rule. *People* v. *Gerold*, 265 Ill. 448, 107 N. E. 165 (Pet. 13), is another.[15] Numerous other examples may be

[14] The history of the Rules shows that the *Burr* rule was rejected by the framers when the early, broad discovery proposals were discarded in favor of the present rule. Compare Advisory Committee's notes to the broad discovery provision embodied in the early drafts of the rules (Federal Rules of Criminal Procedure, Preliminary Draft (1943), p. 103; *id.* Second Preliminary Draft (1944), pp. 94–95) with the note to Rule 16. In any event, the subpoena in the *Burr* case does not bear the slightest resemblance to that in the case at bar. In that case Chief Justice Marshall issued a subpoena for a specific identifiable object of evidence, "a paper which the accused believed to be essential to his defense, which may, for aught that now appears, be essential" (25 Fed. Cas. at 37; Appellees' Br. 25). The present subpoena, on the other hand, represents an effort to secure disclosure of substantially all the documents, evidentiary or not, in the Government's possession.

[15] In the *Gerold* case a defendant was permitted to inspect books and records of transactions of his former public office where the charges against him were founded on these papers. It involved, as did *Burr*, a degree of pre-trial discovery. But there, as in *Burr*, the discovery was restricted to specific identifiable evidence thought by the court to be of potentially crucial importance to the preparation of the defense and which, moreover, was evidence in the category of "public records."

[16] *United States* v. *Warren*, 53 F. Supp. 435 (D. Conn.); *United States* v. *Rich*, 6 Alaska 670; *Daly* v. *Dimock*, 55 Conn. 579, 12 Atl. 405; *State* v. *Lowery*, 160 La. 811, 107 So. 583; *State* v. *Haas*, 188 Md. 63, 51 A. 2d 647; *People* v. *Gatti*, 167 Misc. 545, 4 N. Y. S. 2d 130; *People* v. *Bellows*, 1 How. Pr. N. S. 149 (N. Y. O. & T.); *State* v. *Morrison*, 175 Wash. 656, 27 P. 2d 1065. And see *Cramer* v. *State*, 145 Neb. 88, 15 N. W. 2d 323.

found.[18] Each is a case where a court has determined that it would be unjust to deny to the defendant access to some specific important piece of evidence upon which the entire defense might hinge, or involving a document which in itself was the basis of the prosecution. None is a case in which the defendant simply wished to know the general content of the prosecution's evidence against him.

CONCLUSION

For the foregoing reasons the decision below is correct, there is no conflict, and the petition for writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951